

**COMMONWEALTH OF KENTUCKY
KENTUCKY BOARD OF TAX APPEALS
FILE NO. K03-S-22**

JOSEPH AND STACY WRIGHT

APPELLANT

V.

ORDER NO K-19270

**DAVIESS COUNTY PROPERTY
VALUATION ADMINISTRATOR**

APPELLEE

The Kentucky Board of Tax Appeals has delegated authority to hearing officers pursuant to KRS 13B.030. The hearing officer entered a recommended order in compliance with the provisions of KRS 13B.110. No exceptions or objections to the recommended order were filed. The Board has reviewed the record and the recommended order.

The Kentucky Board of Tax Appeals conducted a hearing in this matter on September 22, 2004 and makes the following findings of fact, conclusions of law and recommended disposition.

FINDINGS OF FACT

This assessment appeal is for real property located at 10008 Highway 456, Owensboro, Kentucky. The Daviess County Property Valuation Administrator assessed the property at \$267,200.00. The taxpayer or Appellant values the property at \$150,000.00. The Daviess County Board of Assessment Appeals valued the property at \$231,400.00. The Appellants filed a timely appeal from the local board with the Kentucky Board of Tax Appeals.

The Appellants offered the following evidence in support of their appeal: The Appellants, Joseph and Stacy Wright, bought the property in June 2001 for \$1,000.00 and constructed a one

and one half story single family home consisting of three bedrooms, two full and two half baths, kitchen, living room and two partially finished rooms upstairs. The Appellants constructed a large metal building on the property, referred to as a garage by the Daviess County Property Valuation Administrator. Joseph Wright appeared as the sole witness for the Appellants and provided sworn testimony in support of an assessment in the amount of \$150,000.00. Mr. Wright offered comparable assessments of three properties that he felt were comparable to his property. In reviewing these properties, the findings showed the square footage was approximately one half the size of his home, which has 2,968 square feet. Mr. Wright's home and building are insured for \$182,710.00. The record shows the mortgage company valued his property at \$210,000.00 (Exhibit #2).

The Daviess County Property Valuation Administrator provided testimony from Lisa Sigar and Tony Lindow. They testified the valuation of \$231,000.00 was based on three comparable sales of which property cards (Exhibit # 4) were presented at the hearing. The first comparable sale is a home valued at \$243,000.00 located on a 180x90 lot with about the same square footage, but approximately thirty five minutes from the Wright's property. The second comparable sale is a home valued at \$165,000.00 located on a .657 acre lot with only 1,480 square feet and is in close proximity of the Wright's property. The third comparable sale is a home valued at \$222,000.00 located on a .623 acre lot with 2,173 square feet and approximately 35 minutes from the Wright's property.

It is the finding of this hearing that the Appellant did sustain their burden of proof regarding their challenge to the final order of the Daviess County Board of Assessment Appeals.

Based upon the evidence in the record, it is the finding of hearing officers, Randall Phillips and Bill Beam, Jr. that the fair cash value of the property in question as of January 1,

2003 is \$210,000.00.

CONCLUSIONS OF LAW

The Kentucky Board of Tax Appeals is vested with exclusive jurisdiction to hear and determine appeals from final rulings, orders and determinations of the Daviess Board of Assessment Appeals pursuant to KRS 131.340(1).

The function of the Board is not simply to review the action of the Daviess County Board of Assessment Appeals, but to try anew the issues as presented. *Jefferson County Property Valuation Administrator v. Oxford Properties, Inc.*, Ky.App., 726 S.W.2d 317, 319 (1987). See KRS 131.340(1).

Section 172 of the Kentucky Constitution mandates that “all property shall be assessed for taxation at its fair cash value, estimated at the price it would bring a fair voluntary sale.”

The choice of the most appropriate and reliable approach to valuation is within the prerogative of the Board. *Jefferson County Property Valuation Administrator*, 726 S.W.2d at 319.

Regardless of the manner or method used by the Property Valuation Administrator or the decision of the Kentucky Tax Board of Appeals, the finding of valuation must be at its fair cash value, estimated at the price it would bring at a fair voluntary sale. *Helman v. Kentucky Board of Tax Appeals*, Ky.App., 554 S.W.2d 889 (1977).

As the party proposing that the Kentucky Board of Tax Appeals set aside the decision of the Daviess County Board of Assessment Appeals, the Appellants have the burden of proving a lower value. KRS 13B.090(7).

If the property is sold at or near the assessment date in a fair and voluntary sale, the sale price is usually the best evidence of the property's fair cash value. *Sears, Roebuck & Company v. Boone County Board of Assessment Appeals*, Ky.App., 715 S.W.2d 888, 889 (1986).

Based upon the facts as established in this hearing, the Board, acting through its hearing officers, concludes that the fair cash value of the subject property as of January 1, 2003 is \$210,000.00.

RECOMMENDED ORDER

The hearing officer recommends the final ruling of the Daviess County BAA be reversed, and recommends the real property be assessed at a fair cash value of \$210,000.00 as of January 1, 2003.

This is a recommended order, and each party shall have fifteen (15) days from the date this recommended order is mailed to file exceptions to the recommendations with the Kentucky Board of Tax Appeals. Failure to file exceptions to the recommended order may result in a party being unable to seek judicial review on appeal. This recommended order has been sent by first class mail on the date below to the last known address of the parties.

FINAL ORDER

The Kentucky Board of Tax Appeals has considered the record and accepts the recommended order of the hearing officers, and adopts it as the Board's final order. Failure to file exceptions to an administrative hearing officer's recommendations after a hearing constitutes a failure to exhaust administrative remedies and precludes appellate review. *Swatzell v. Natural Resources and Environmental Protection Cabinet*, Ky App 962 SW 2d 866 (1998).

The June 25, 2003 final ruling of the Daviess County Board of Assessment Appeals is

reversed and the real property is to be assessed at a fair cash value of \$210,000.00 as of January 1, 2003.

The following information is provided pursuant to the final order requirements of KRS Chapter 13B:

This is a final and appealable order. All final orders of this agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:

- (a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;
- (b) A stay is permitted by the agency and granted upon request; or

(c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

Within twenty (20) days after service of the petition of appeal, or within further time allowed by the Circuit Court, the Kentucky Board of Tax Appeals shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review in compliance with KRS 13B.140(3).

**DATE OF ORDER
AND MAILING: FEBRUARY 24, 2005**

FULL BOARD CONCURRING

**NANCY MITCHELL
CHAIR**